

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wimbledon Shops, Inc.

Serial No. 75/874,479

Todd E. Stockwell of Stockwell & Associates, PSC for
applicant.

Brian Neville, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Seeherman, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Wimbledon Shops, Inc. seeks to register FRITZ'S BASKET
BABIES as a trademark for collectible porcelain dolls.¹

The Trademark Examining Attorney has finally refused
registration under Section 2(d) of the Trademark Act, 15

¹ Serial No. 75/874,479, filed December 15, 1999, alleging a bona fide intention to use the mark in commerce. The word BABIES is disclaimed apart from the mark as shown.

U.S.C. §1052(d), in view of the prior registration of the mark shown below for "puppets."²

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When the Examining Attorney made the refusal final, applicant appealed. Applicant and the Examining Attorney filed briefs,³ and an oral hearing was held. We reverse the refusal.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities/dissimilarities between the marks and the similarities/dissimilarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

² Registration No. 2,234,201 issued March 23, 1999.

³ Applicant, with its reply brief, for the first time, submitted a photocopy of the file wrapper and contents of the cited registration. This material is clearly untimely, see Trademark Rule 2.142(d), and has not been considered.

The Examining Attorney maintains that the marks are confusingly similar in overall commercial impression and that collectible porcelain dolls and puppets are related goods. In connection with the refusal, the Examining Attorney submitted three third-party applications and three third-party registrations of marks which cover porcelain dolls, on the one hand, and puppets, on the other hand. In addition, the Examining Attorney submitted the web pages of several companies which sell both collectible dolls and puppets.

Applicant, in urging reversal of the refusal to register, contends that the marks are dissimilar; that its collectible porcelain dolls and registrant's puppets travel in different channels of trade; and that its collectible porcelain dolls are marketed to serious adult collectors who will exercise great care in the purchase of these goods whereas registrant's puppets are marketed to children for play.

Insofar as the respective goods are concerned, it is well settled that they need not be similar or competitive to support a holding of likelihood of confusion. However, the goods must be sufficiently related such that they will be encountered by the same persons, who because of the relatedness of the goods and the similarities of the marks,

would believe mistakenly that the goods originate from or are in some way associated with the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

We are not persuaded, on this record, that collectible porcelain dolls and puppets are so related. With respect to the evidence relied on by the Examining Attorney, the third-party applications of marks which cover collectible dolls and puppets are evidence only of the fact that such applications were filed. Unlike registrations, they are not probative of whether these kinds of goods may emanate from a single source. Thus, we are left with only three third-party registrations of marks that cover both collectible dolls and puppets. We note that two of these registered marks are clearly popular character marks (i.e., BABAR and RAGGEDY ANN & ANDY) that are licensed for a wide variety of toys and novelties. While it is not clear whether the mark SUNBONNETS and the design of two girls in the other registration is a character mark, we nonetheless note that this registration also covers a variety of toys and novelties. Thus, not only are the third-party registrations insufficient in number to convince us that collectible porcelain dolls and puppets are related, but the marks in at least two of the third-party registrations

are of such a nature that they are not particularly probative of whether consumers would expect the specific goods involved in this appeal to emanate from the same sources.

As to the company web pages made of record by the Examining Attorney, while they do show that collectible dolls and puppets are offered for sale in some of the same kinds of stores (i.e., gift stores and toy and doll stores), we note that the gift stores in these web pages sell many other kinds of goods, e.g. candles, greeting cards, picture frames, and desk accessories. Also, the web pages show that the toy and doll stores therein sell many kinds of toys and novelties. Because of the wide variety of products sold by these gift stores and toy and doll stores, we are unable to conclude from the web pages that purchasers would assume that collectible porcelain dolls and puppets come from the same source, any more than they would assume that all goods sold in a department store do.

It must be remembered that applicant's goods are identified as collectible porcelain dolls. Such goods will be purchased by collectors who are knowledgeable about their purchases, and can be expected to exercise great care when making them. Such consumers are not likely to assume that all goods sold through such web sites as "Maggie's

Gifts & Collectibles" and "Courtney's e-Store" come from the same source, even if there are some similarities in the marks that identify the various goods.

Finally, with respect to the marks, we acknowledge that the cited mark is the name FRITZ, and applicant's mark begins with FRITZ'S. However, applicant's mark also includes the words BASKET BABIES, and these differences in the marks would be readily apparent to the discriminating purchasers of collectible porcelain dolls.

In sum, when we consider the differences in the goods and the marks, and the discriminating nature of the purchasers of applicant's goods, it is our view that applicant's intended use of FRITZ'S BASKET BABIES for collectible porcelain dolls is not likely to cause confusion with FRITZ in stylized letters for puppets.

Decision: The refusal to register under Section 2(d) of the Trademark Act is reversed.

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